

Message Text

UNCLASSIFIED

PAGE 01 STRASB 00231 01 OF 02 171719Z
ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07
EA-09 FRB-01 INR-07 IO-13 NEA-10 NSAE-00 USIA-15
OPIC-06 SP-02 TRSE-00 CIEP-02 LAB-04 SIL-01 AGRE-00
OMB-01 OIC-02 L-03 DHA-02 /104 W
----- 046757 /53

R 171020Z DEC 76
FM AMCONSUL STRASBOURG
TO SECSTATE WASHDC 0970
INFO AMEMBASSY PARIS
USMISSION OECD PARIS
USMISSION EC BRUSSELS

UNCLAS SECTION 1 OF 2 STRASBOURG 231/1

E.O.11652: N/A
TAGS: COE, PFOR.
SUBJECT: COUNCIL OF EUROPE - MEETING OF COMMITTEE OF EXPERTS ON
DATA PROTECTION, STRASBOURG NOV. 29 - DEC. 1, 1976.

REF: A) STRASBOURG 196 B) OECD PARIS 36381

1. SUMMARY: COMMITTEE DATA EXPERTS MET STRASBOURG NOV. 29 -
DEC. 1, WITH U.S., JAPAN, OECD, EEC, SPAIN, FINLAND, AND CANADA
PRESENT AS OBSERVERS. DURING COURSE OF 3 DAY MEETING COMMITTEE
APPOINTED 2 WORKING GROUPS. FIRST GROUP WILL PREPARE DRAFT
TREATY ON DATA PROTECTION TO BE PRESENTED FOR CONSIDERATION
BY FULL COMMITTEE IN SEPTEMBER. SUB-GROUP WILL MEET
FEB. 14-16 AND AGAIN IN JUNE OR EARLY JULY. OBSERVERS NOT
AT PRESENT INVITED TO FIRST MEETING, ALTHOUGH THEY MAY BE
INVITED TO SECOND, AND WILL BE INVITED TO FULL COMMITTEE MEETING
FALL. SECRETARIAT SAYS FULLEST INFORMATION WILL BE GIVEN TO OBSER-
VERS. POST SUGGESTS HOWEVER, THAT DEPARTMENT APPOINT QUALIFIED
OBSERVER AND REQUEST TO PARTICIPATE IN ALL MEETINGS OF SUB-
GROUP. SECOND GROUP DEAL WITH PROBLEMS OF MEDICAL DATA BANKS
AND WILL HOLD ONE MEETING IN SPRING. END SUMMARY.
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 STRASB 00231 01 OF 02 171719Z

2. EXPERTS ON DATA PROTECTION MET IN STRASBOURG AT THE COUNCIL OF
EUROPE FROM NOVEMBER 29 THROUGH DECEMBER 1. THE MEETING WAS IN
CONFORMITY WITH A DECISION OF THE MINISTERS DEPUTIES OF THE
COUNCIL OF EUROPE TO SET UP A COMMITTEE OF EXPERTS TO EXAMINE
AND IDENTIFY PARTICULAR PROBLEMS RELATING TO THE PROTECTION OF

PRIVACY VIS-A-VIS DATA PROCESSING, AND TO SUBMIT A REPORT ON THE RESULTS OF THESE STUDIES TO ENABLE THE EUROPEAN COMMITTEE ON LEGAL PROTECTION (CCJ) TO DECIDE WHAT FURTHER ACTION SHOULD BE TAKEN IN THIS RESPECT . A SECONDARY PROJECT WAS TO EXAMINE DATA BANK REGULATIONS FOR MEDICAL DATA BANKS.

3. IN ADDITION TO THE MEMBER COUNTRIES, ALL OF WHOM WERE REPRESENTED EXCEPT GREECE, LUXEMBOURG AND MALTA, THERE WERE OBSERVERS FROM CANADA, FINLAND, JAPAN, SPAIN, THE UNITED STATES, THE EEC AND THE OECD (LIST ATTACHED TO STRASBOURG A- 98 POUCHED DEPT.) AFTER THE UNOPPOSED ELECTION OF THE FRENCH REPRESENTATIVE, SOIGNET AS PRESIDENT, DISCUSSION CENTERED ON THE TASKS OF THE COMMITTEE. IT WAS IMMEDIATELY APPARENT THAT THE COUNCIL OF EUROPE SECRETARIAT VIEWED THE MEETING AS THE FIRST OF A SERIES TO DRAFT A CONVENTION ON INTERNATIONAL DATA PROTECTION, AND THAT WITH THE CAREFULLY WORKED OUT SUPPORT OF THE FRENCH, AND TO A LESSER EXTENT THE SWEDES, PROPOSED TO DISMISS ANY SERIOUS CONSIDERATION OF OTHER POSSIBLE METHODS OF CONTROL.

4. THE SOMETIMES VIGOROUS BUT UNCOORDINATED EFFORTS BY THE BRITISH, ITALIANS, CANADIANS AND OTHERS TO HAVE THE EXPERTS EXAMINE OTHER APPROACHES TO THE PROBLEM SUCH AS RECIPROCITY, OR HARMONIZATION OF INTERNAL LAWS WERE SWEEP ASIDE WITH ASSERTIONS THAT SUCH MATTERS COULD BE DISCUSSED IN THE MEETINGS OF THE WORKING GROUP, WHO WOULD IN THE FIRST INSTANCE PREPARE TERMS OF REFERENCE FOR THE PROPOSED CONVENTION. ON THE THIRD DAY THE FRENCH CHAIRMAN STATED THAT THE MOST APPROPRIATE MEANS OF DEALING WITH THE PROBLEM WOULD BE A TRADITIONAL TREATY AND THAT A GOOD STARTING POINT WOULD BE THE DRAFT TEXT PREPARED BY COUNCIL OF EUROPE SECRETARIAT.

UNCLASSIFIED

UNCLASSIFIED

PAGE 03 STRASB 00231 01 OF 02 171719Z

5. THE DRAFT IN ADDITION TO THE PREAMBLE CONTAINS 8 ARTICLES COVERING FIELD OF APPLICATION, PRINCIPLES OF DATA PROTECTION, SUPERVISORY AUTHORITY, SUPERVISION OF TRANSFRONTIER DATA PROCESSING, REMEDIES OF DATA SUBJECTS RESIDING ABROAD, COOPERATION BETWEEN SUPERVISORY AUTHORITIES, COSTS AND FEES, AND ESTABLISHMENT OF A STANDING COMMITTEE. TEXT OF THE DRAFT IS CONTAINED IN DOCUMENT EXP/DATA PROT. (76) 3, POUCHED TO DEPARTMENT WITH OTHER DOCUMENTS RELATING TO THE SUBJECT AS ENCLOSURE TO STRASBOURG A-98.

6. AFTER DISCUSSIONS WEIGHING PROS AND CONS OF PROCEDURE AND CERTAIN EXPLANATIONS OF THE STATUS OF DATA PROTECTION LEGISLATION IN VARIOUS MEMBER COUNTRIES, IT WAS DECIDED TO ESTABLISH TWO STUDY GROUPS, ONE ON TRANSBORDER DATA FLOW AND ONE ON MEDICAL DATA. THE FIRST AND MOST IMPORTANT GROUP WILL STUDY THE PROBLEMS OF TRANSFRONTIER DATA FLOW AND OF ELABORATING A DATA PROTECTION CONVENTION USING THE COUNCIL OF EUROPE DRAFT

AS A STARTING POINT. MEMBERS OF THIS GROUP ARE AUSTRIA, BELGIUM, FRG, FRANCE, ITALY AND SWEDEN, ALTHOUGH OTHER MEMBERS MAY JOIN IF THEY WISH. THE GROUP WILL MEET FEBRUARY 14-16 AND AGAIN IN LATE JUNE OR EARLY JULY. A SECOND MEETING OF THE FULL COMMITTEE IS PLANNED FOR 12 TO 15 SEPTEMBER AFTER A SYMPOSIUM ON TRANSBORDER MOVEMENT OF DATA TO BE HELD IN OECD. ACCORDING COUNCIL OF EUROPE SECRETARIAT SOURCES, WORK WILL BE COORDINATED WITH OECD, EEC AND THE OBSERVER STATES. IN THE BEGINNING AT LEAST, THIS COOPERATION WILL BE LIMITED TO INFORMING OBSERVERS OF THE WORK UNDERTAKEN BY THE WORKING GROUP, NO PROVISION HAVING BEEN MADE FOR THEIR PARTICIPATION IN THE WORKING GROUP. SECRETARIAT OFFICIALS EXPLAINED THAT WHILE COUNCIL OF EUROPE RULES PERMIT OBSERVERS TO PARTICIPATE IN COMMITTEE WORK, THEY ARE SILENT ON WHETHER OBSERVERS MAY TAKE PART IN THE WORK OF WORKING GROUPS. THEY SUGGESTED THAT ARRANGEMENTS MIGHT BE MADE FOR DIRECT OBSERVER PARTICIPATION AT THE SECOND MEETING IN JUNE OR JULY AND OF COURSE AT THE SEPTEMBER PLENARY. THE MEDICAL DATA WORKING GROUP IS EXPECTED TO MEET APRIL 4-6.

UNCLASSIFIED

UNCLASSIFIED

PAGE 04 STRASB 00231 01 OF 02 171719Z

UNCLASSIFIED

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PAGE 01 STRASB 00231 02 OF 02 171727Z
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OPIC-06 SP-02 TRSE-00 CIEP-02 LAB-04 SIL-01 AGRE-00
OMB-01 L-03 OIC-02 DHA-02 /104 W
----- 046910 /53

R 171030Z DEC 76
FM AMCONSUL STRASBOURG
TO SECSTATE WASHDC 0971
INFO AMEMBASSY PARIS
USMISSION OECD PARIS
USMISSION EC BRUSSELS

UNCLAS SECTION 2 OF 2 STRASBOURG 231/2

7. COMMENT: GIVEN THE EVIDENT INTENTION OF THE COUNCIL OF EUROPE SECRETARIAT AND A NUMBER OF ITS MEMBERS TO PRESS AHEAD

WITH THE DRAFTING OF A DATA PROTECTION CONVENTION AND THE EFFECT WHICH SUCH AN INSTRUMENT COULD HAVE ON DATA BANKS LOCATED WITHIN THE UNITED STATES WHICH SERVE EUROPEAN CUSTOMERS, I AGREE WITH THE STRONG RECOMMENDATION MADE IN PARA 4 OF REF.B. URGING ADEQUATE PROFESSIONAL U.S. REPRESENTATION IN WORK OF DATA COMMITTEE. IF THEIR CONTRIBUTION IS TO BE EFFECTIVE, OBSERVERS SHOULD PARTICIPATE IN THE WORK FROM THE EARLIEST STAGES, AND THEREFORE SHOULD TAKE PART IN THE FEBRUARY MEETING OF THE DATA FLOW WORKING GROUP. PARTICIPATION IN THIS MEETING IS IMPORTANT SINCE THE PLAN IS FOR THE WORKING GROUP TO COMPLETE A DRAFT TREATY FOR CONSIDERATION BY THE MEETING OF THE FULL COMMITTEE IN SEPTEMBER. THE TREATY WOULD BE SUBMITTED TO THE EUROPEAN COMMITTEE ON LEGAL COOPERATION (CCJ) FOR ITS CONSIDERATION AFTER THAT MEETING. IF THE DEPARTMENT WISHES TO PARTICIPATE IN THE COMMITTEE WORK, I SUGGEST IT DESIGNATE A QUALIFIED OBSERVER AND THAT AFTER COORDINATION WITH OTHER OBSERVERS, THAT I BE INSTRUCTED TO INFORM THE COUNCIL THAT THE U.S. HOPES TO PARTICIPATE IN THE TWO MEETINGS OF THE WORKING GROUP ON TRANSFRONTIER DATA FLOW. THIS REQUEST SHOULD UNCLASSIFIED

UNCLASSIFIED

PAGE 02 STRASB 00231 02 OF 02 171727Z

BE MADE SOON TO GIVE THE MAXIMUM CHANCE FOR U.S. PARTICIPATION. THE RELUCTANCE OF THE SECRETARIAT TO OPEN THE MEETING OF THE WORKING GROUP TO OBSERVERS PROBABLY STEMS FROM TWO REASONS: FIRST SINCE THE RULES DO NOT SPECIFICALLY PROVIDE FOR OBSERVER PARTICIPATION IN WORKING GROUPS OR SUB-COMMITTEES, PERMISSION TO ALLOW OBSERVER PARTICIPATION MUST BE MADE BY THE MINISTER S DEPUTIES. THIS OF COURSE WOULD ALSO APPLY TO THE JUNE MEETING, AND IT WOULD SEEM BEST TO HAVE THE DECISION MADE NOW. SECONDLY, SECRETARIAT AND SOME MEMBERS MAY PREFER TO BEGIN DRAFTING OF TREATY WITHOUT HINDRANCE OR OBSERVATIONS BY OUTSIDERS. IN ANY CASE OBSERVERS MAY HAVE TO WAIT SOME TIME FOR DOCUMENTATION ON THE FEBRUARY MEETING. FOR EXAMPLE THE OFFICIAL REPORT OF THE DECEMBER MEETING STILL IS NOT PUBLISHED AND MAY NOT BE UNTIL THE BEGINNING OF THE NEW YEAR.ROMINE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: DATA, REGIONAL ORGANIZATIONS, COMMITTEE MEETINGS, CONSULTANTS, INFORMATION CONTROL, MEETING REPORTS
Control Number: n/a
Copy: SINGLE
Draft Date: 17 DEC 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STRASB00231
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760464-1208
From: STRASBOURG
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19761231/aaaabbac.tel
Line Count: 208
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 76 STRASBOURG 196, 76 OECD PARIS 36381
Review Action: RELEASED, APPROVED
Review Authority: schwenja
Review Comment: n/a
Review Content Flags:
Review Date: 22 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <22 JUN 2004 by hattaycs>; APPROVED <30 AUG 2004 by schwenja>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: COUNCIL OF EUROPE - MEETING OF COMMITTEE OF EXPERTS ON DATA PROTECTION, STRASBOURG NOV. 29 - DEC. 1, 1976.
TAGS: PFOR, COE
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006